**STATE OF PROGRESS OF DRUG POLICIES IN BOLIVIA.**

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**INTRODUCTION.-**

This paper for the ACNUDH has been made by Foundation Acción Semilla, OSC which Works in the city of La Paz-Bolivia. Our work mainly approaches the problematic of drugs with a perspective that prioritizes gender, vulnerable populations and education.

Our contribution pretends to analyze the progress in our current constitution and its relation to the problematic of drugs in topics referred in the Forth chapter of the final document from UNGASS 2016. This is why, this paper has two main axes. On one hand, the benefit to vulnerable populations involved in consumption and microtrafic, with a gender perspective, because conviction and preventive detentions are the main reasons for overpopulation in female prisons. On the other hand, the benefits that the presidential ordinance 3030 has produced in order to appease this problem.

**SUBSTITUTE MEASURES AND PROPORTIONALITY OF THE PENALTIES RELATED TO VULNERABLE POPULATIONS.**

Vulnerable populations affected by the current drug legislation, Law 1008, include women, teenagers, and people with low resources, who suffer the inexistence of proportionality of convictions and justice retardation because of the lack of substitute measures, which creates social problems such as family fractionation and other consequences.

Thus, it is urgent to understand the Law 1008, Law 913 and Law 1005 (abrogated this year due to social pressure) from the problematic perspective. The Law 1008 of punitive character, to be a congruent legislation with the final document of the UNGASS 2016 in the following points:

**J) Substitute measures**. It is mentioned that *“formulation, adoption and application,...of substitute measures or complementaries in regards to the conviction sentence or cases that proceed”* (UNGASS 2016:18). About this point, the Bolivian Contitution intended along Law 1005 to make a system of substitute measures specified in its Tittle IV PRECAUTIONARY MEASUREMENTS, where these happen to have an **exceptional character** and can no longer be imposed by the judge of court. So, this expectional character about precautionary measures proposes as sustitute measures: Being able to give a promise to undergo the process.; TO undergo to the attention of a persono or institution; Surveillance by electronic device; personal or economic bail; the obligation to present in front of an authority, appointed by the accuse; home detention, among others. It is important to highlight point (11) from the article, whewe it is mentioned that preventive prison will only be assignated for crimer with a sanction equal or superior to 6 years.

This measurement palette make microtraffic not to be considered as a crime, and to be considered as an offense, and its imprisonment penalti is approximately of three years, so this figure could not be given preventive prison.; which represents a progress to the problem of prisons overcrowding and retardation of justice in the country; in addition to the reduction of social problems associated with long periods of preventive detention such as those resulting from the separation of families and especially of women from their children.

**L) Proportionality of penalties.** The point of the 2016 UNGASS document states that it is necessary "to promote proportionate national policies, practices and guidelines regarding the imposition of penalties for drug-related offenses, so that the severity of penalties is proportional to the seriousness of the crimes and to take into account mitigating and aggravating factors ... "(UNGASS 2016: 18). In Law 1005 the criterion of proportionality is better handled since it distinguishes between trafficking of substances (article No. 107), micro-trafficking (article No. 215) and decriminalization of immediate consumption. This distinction was not present in the law 1008 and therefore a consumer could end up having a similar penalty to a trafficker of large quantities. Thus the proposal (in the end failed) of the penal code, it meant a great advance.

**PRESIDENTIAL DECREE Nº 3030 AND FEMALE PENITENTIARY POPULATION**

We want to highlight advances in policies and good practices of the State specifically of human rights, focusing especially on the rights of women deprived of liberty. In this section we will address the treatment of this population in crimes related to Law 1008. Taking into account that the final document of UNGASS 2016; it contemplates operational recommendations to cross-sectoral issues. Specifically in subparagraph a) states that the safety and wellbeing of individuals, families, vulnerable members of society and communities must be prioritized.; Regarding subparagraph d), it is important to mention that protection and risk factors must be addressed, as well as the conditions that continue to make women vulnerable to participation in drug trafficking; and in subparagraph (g), the gender perspective is incorporated into drug programs and policies, especially spread measures that take into account the specific needs and circumstances of women in relation to the world drug problem.

The imprisonment of women has a tremendous effect on families and the community as children and marginalized by the burden of living in conditions of economic scarcity. Moreover, in the year 2017, the digital media El Deber has registered that Bolivia was the fourth country in Latin America with the highest number in prison overcrowding with 256% (Iván Paredes Tamayo, 2017) [[1]](#footnote-1) of average overcrowding.

Although the deprivation of liberty must be used as a last resort in judicial proceedings, this is not fulfilled. However, it has been considered a possible solution to problems such as overcrowding, corruption, retardation of justice and excessive preventive detention with Presidential Decree No. 3030 which was promulgated on the basis of Article 74, paragraph I of the Political Constitution of the State which contemplates that the State has the responsibility to take charge of the social reintegration of the deprived from freedom, in addition to ensuring their rights and giving them a dignified life during their imprisonment; for this purpose it has been considered to enact the amnesty or pardon, approved in the plurinational legislative assembly on January 10, 2017, in charge of maintaining and preserving citizen security. This presidential decree benefits: "people with terminal illnesses, incurable, serious or very serious, people with severe or very serious disabilities, pregnant women, mothers and fathers who have exclusive care for their children, , seniors; and generally excludes the granting of Amnesty, Partial Pardon and Total Pardon, to persons prosecuted for crimes that affect the life and physical and sexual integrity of persons, corruption offenses, as well as crimes that affect the internal and external security of the State ". The decree contemplates the rights of vulnerable women, these policies from a gender perspective have helped to ensure that children and the environment can recover women who have committed drug-related crimes. Thus, we will focus on women who have benefited from presidential decree 3030 in concession of total pardon. According to the National Directorate of Penitentiary Regime, 2016 management has registered a prison population of 2,875 people deprived of liberty with crimes related to the 1008 ; This figure represented 19.69% of the prison population nationwide. Of the 2,875 private prisoners, 443 are women related to crimes such as trafficking, supply, manufacturing and transportation of controlled substances.

The year 2018 has registered that 95 women between 19 and 62 years of age have been benefited with the concession of total pardon, among the identified crimes are: supply, trafficking, transportation, instigation and complicity (DGRP, 2018). Clearly this benefits women head of the household, mothers who live with children in prison and in some cases pregnant women. We are aware that this contribution contributes to the welfare of the family and above all of society; This legislative contribution ensures the development of women with the aim of guaranteeing the exercise and enjoyment of their human rights.

**CHALLENGES**

Although in relation to the 2016 UNGASS document, Bolivia is far from being able to meet the criteria established in its 15 points, our main challenge is to consolidate its legal instruments to provide a framework for drug and related policies, focusing on vulnerable populations from a gender perspective.

The female prison population suffers even more stigmatization in the use of controlled substances than in the sale, supply or trafficking, given the roles and behaviors that society has attributed to the female role, the prejudices of both male and female population have contributed significantly.

**RECOMENDATIONS**

The recommendations are inscribed in the sense of reducing damages of Law 1008 in vulnerable populations when they are involved in drug issues and promoting compliance with fundamental human rights:

1. That by specifying the legislation on Law 1005, the mechanism of proportionality of sanctions will be deepened, including mitigating circumstances related to the vulnerability of individuals.
2. Establish in detail a specific margin to consider a situation as consumption, since the ambiguity of this determination can cause a consumer to be considered as a trafficker.
3. The insistence on considering that substitute measures be applied to preventive detention to greatly reduce the problem of overcrowding at the national level.

1. Autor: Iván Paredes Tamayo, publicación El Deber. 2017 página web: https://www.eldeber.com.bo/septimodia/Bolivia-el-cuarto-pais-con-mayor-hacinamiento-en-sus-carceles-20171221-0093.html revisado el 12 de mayo de 2018. [↑](#footnote-ref-1)